



The Texas A&M University System

Office of the Chancellor

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September 1, 1995

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Opinion Committee

Ms. Sarah J. Shirley, Opinion Committee
Chair, Opinions Committee
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711

FILE # ML-35706-95

ID. # 35706

RE: Request for an opinion on the expenditure of public funds for the Bush Library

Dear Ms. Shirley:

On behalf of the City of College Station, Texas, The Texas A&M University System requests an opinion on the legality of expending public monies, including hotel-motel occupancy taxes on the Bush Library. The George Bush Library Committee is seeking a financial commitment of \$50,000.00 per year from the City of College Station, Texas. College Station is a chartered home-rule municipal corporation. The George Bush Library will be located in the corporate limits of College Station, Texas. In addition to being a center for research and scholarship, it is anticipated that the library will attract tourists to College Station.

The City of College Station asks whether the expenditure of public funds on the George Bush Library qualifies as a legitimate public purpose of the municipality, whether a requirement that the George Bush Library stay open in each year that is funded constitutes adequate control to establish the public purpose and whether it is authorized to expend hotel-motel occupancy funds on the George Bush Library.

a. The expenditure qualifies as a legitimate public purpose.

Texas Constitution Art. 3, §52, (Vernon Supp. 1995) provides in pertinent part as follows:

- (a) Except as otherwise provided by this section, the Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit to or grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in any such corporation, association or company.

Universities

Prairie View A&M University
Tarlton State University
Texas A&M International University
Texas A&M University

Texas A&M University-Corpus Christi
Texas A&M University-Kingsville
West Texas A&M University

Agencies

Texas Agricultural Experiment Station
Texas Agricultural Extension Service
Texas Animal Disease Diagnostic Laboratory
Texas Engineering Extension Service
Texas Forest Service

Ms. Sarah J. Shirley
September 1, 1995
Page 2

While Tex. Atty. Gen. Op. No. 94-008 (1994) does not state whether the proposed expenditure qualified as a public purpose, the opinion interprets the constitutional provision to invest great latitude in municipalities to determine a public purpose. Relying on *Barrington v. Cokinos*, 338 S.W.2d 133 (Tex. 1960) and *Key v. Commissioners Court of Marion County*, 727 S.W.2d 667 (Tex. App. — Texarkana 1987, no writ), the Committee ruled that a grant of public money can be made for a public purpose if sufficient controls are placed on the transaction to assure that the public purpose is carried out.

It is College Station's position that the City Council, as the governing body, has the authority to decide that a financial donation to the George Bush Library fund is a public purpose of the municipality and that this decision can be made during the budget process.

- b. **The requirement of adequate control is met by a requirement that the George Bush Library stay open each year that funding is provided.**

The public entity is required to maintain adequate controls over the funds in order to assure that the public purpose is achieved. It is College Station's position that this objective is accomplished by a contract that requires the George Bush Library to stay open during an entire year that the funding is received. See, Tex. Atty. Gen. Op. No. MW-423 (1982).

- c. **The City's hotel/motel occupancy tax funds can be donated to the George Bush Library.**

The hotel/motel occupancy tax is authorized by state statute, specifically section 351.001, et seq. of the Texas Tax Code (Vernon 1992 & Supp. 1995). The permissible uses of this tax are governed by Section 351.101 which provides in pertinent part as follows:

- (a) Revenue from the municipal hotel occupancy tax may be used only to promote tourism and the convention and hotel industry, and that use is limited to the following:
- (3) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the municipality or its vicinity;
 - (4) the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recordings, and other arts related to the

Ms. Sarah J. Shirley
September 1, 1995
Page 3

presentation, performance, execution, and exhibition of these major art forms; and

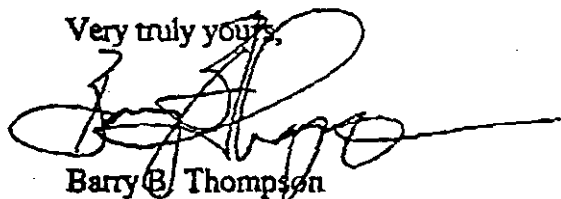
- (5) historical restoration and preservation projects or activities or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums:

- (B) located elsewhere in the municipality or its vicinity that would be frequented by tourists and convention delegates.

While it does not address the permissible uses of the collected taxes, the City of College Station does have a companion ordinance, codified in Chapter 1, Section 11 of the City of College Station Code of Ordinances. Therefore, the City of College Station City Council is authorized to determine the suitability of the funding of this request during its budget process.

In summary, the Opinions Committee should find that the City of College Station City Council is authorized to determine that the George Bush Library is a legitimate public purpose to which the City can contribute funding, including hotel-motel occupancy tax funds in conformity with the Texas Tax Code.

Very truly yours,



Barry B. Thompson
Chancellor

cc: Dr. Ray Bowen
Mr. Scott Kelly
Mr. Don Wilson
Dr. Larry Ringer
Ms. Cathy Locke